

I again thank Senator KEMPTHORNE for his outstanding work on this very important and critical piece of legislation. If I could just tell him, I met with the mayors of my State a couple of months ago, I met with the county supervisors of my State, and there was one issue and one issue only they wanted to talk about and that was Senator KEMPTHORNE's legislation. So he is even famous in the State of Arizona as well as the State of Idaho.

So I thank my friend from Idaho and I yield the floor.

Mr. KEMPTHORNE. Mr. President, I just wish to thank the Senator from Arizona for his kind remarks and also to acknowledge his strong and enthusiastic support to curb these unfunded Federal mandates. He is one of the stalwarts in this effort. So I thank him.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota is recognized.

Mr. DASCHLE. Mr. President, I would like to use my leader time, if I could.

The PRESIDING OFFICER. The Senator is recognized.

MRS. ROSE FITZGERALD KENNEDY

Mr. DASCHLE. Mr. President, I join my colleagues in extending my sincere sympathy to my friend and colleague, Senator TED KENNEDY on the death of his mother.

Mrs. Rose Fitzgerald Kennedy lived a life that saw more than its share of public tragedy and private sorrow. Her courage and her profound faith in her church and her God gave her the strength to be the support of her children and an inspiration to all Americans.

Mrs. Kennedy's passing is a loss to our Nation. No one old enough to remember will ever forget the fortitude with which she bore the assassination of two beloved sons, President John F. Kennedy and Senator Robert Kennedy.

Her public strength helped the Nation endure, as her private strength has always been, in the words of her son John, "the glue that held the Kennedy family together."

The tragedies she suffered did not diminish her sense of service. Into an age where no one would have questioned a desire to retire from public life, she traveled tirelessly, promoting the work of the Joseph P. Kennedy Jr. Foundation, to aid the mentally retarded.

Her spirit and work earned her the admiration of the entire world and made Americans very proud.

So today I know that I express the sentiment of all of our colleagues in saying that our prayers are with her son, our colleague, TED, and her other children and grandchildren on this occasion.

I yield the floor.

#### UNFUNDED MANDATE REFORM ACT

The Senate continued with the consideration of the bill.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I ask unanimous consent that I be allowed to yield to the Senator from New Jersey, by the way, whose birthday it is today, and this is not in lieu of a birthday present I say to the Senator from New Jersey, I would ask unanimous consent that I be allowed to yield to the Senator from New Jersey for the purpose of his offering an amendment without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LAUTENBERG. I thank the Senators and friends who are on the floor to wish me well on my birthday. It is one of those things, a time we would like to pass without notice, but, on the other hand, being here to recall it is something of value as well.

#### AMENDMENT NO. 199

(Purpose: To exclude from the application of the Act, provisions limiting known human (Group A) carcinogens defined by the Environmental Protection Agency)

Mr. LAUTENBERG. Mr. President, pursuant to the unanimous-consent request, I ask unanimous consent that the pending amendment be temporarily set aside so that I may offer an amendment to meet the terms of the unanimous-consent agreement. I send the amendment to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG] proposes an amendment numbered 199.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 13, line 5, strike out "or".

On page 13, line 8, strike out the period and insert in lieu thereof a semicolon and "or".

On page 13, insert between lines 8 and 9 the following new paragraph:

(7) limits exposure to known human (Group A) carcinogens, as defined in the Environmental Protection Agency's Risk Assessment Guidelines of 1986.

Mr. LEVIN. Mr. President, last week we began a colloquy with the managers of the bill on some of the uncertain provisions and ambiguous provisions in the bill. I thought we could pick that colloquy up this evening. I have a number of amendments that have been offered. There are two additional amendments to be offered that have been listed for me. I think the number of the issues which have been raised, even though amendments both are filed and to be filed, could be clarified if I could discuss with the managers of the bill some of the provisions which I consider to be ambiguous. In order to do that, I thought I would again use the same hypothetical. If I could get copies of this

to the two managers of the bill, this hypothetical Senate bill is the one I used last week. We went into the first ambiguity and then after about 3 hours of debate clarified it with an amendment.

This bill, hypothetical, to be offered after the effective date of this law mandates reductions of dangerous levels of mercury from incinerator emissions after October 1, 2005. Under this hypothetical bill the EPA is designated to determine what constitutes a mercury level dangerous to human health. The first question is when is this bill effective? That is not a theoretical question. That is a very critical question because there must be an estimate of the cost of an intergovernmental mandate the first year that it is effective. When a bill or amendment is effective becomes a critical issue and could mean the life or death of the bill or amendment because if the estimate of the mandate is more than \$50 million in any year starting the first year it is effective, for 5 years, then certain things are triggered. Very significant things are triggered. Estimates, authorizations, language relative to appropriations, all must be in the bill. Agencies have to be designated to pull back from or to relieve the local governments of the mandate. That estimate and its effective date are absolutely central to this new version of the bill.

Last year we had a bill which had broad cosponsorship, including myself, where there was an estimate required but there was less hanging on it, on its specificity, on its certainty, on its length, and as to when it is first effective, when the mandate was first effective. A lot less was hanging on that because you did not have this mechanism, this new point-of-order mechanism, relative to the appropriation of funds. That is one of the things which is new this year. Unless we do it right it is going to complicate this process beyond anyone's wildest dream or nightmare. So that is the area that I want to discuss with my friends.

Last week I asked the Senator from Ohio what is the effective date of this mandate in my hypothetical bill. He basically said, well, it would have to be sometime before October 1, 2005. So I thought to clarify the situation I would give an actual or a hypothetical CBO estimated direct cost of the local government in my hypothetical so we can get some clarification and some legislative history as to what is intended by the mandate.

The chart that I have up gives the following CBO estimated direct costs for these 87,000 State, local, and tribal governments. In this hypothetical in fiscal year 1996, the estimated direct cost is \$6 million. In fiscal year 1997, the estimated direct cost is \$8 million; in 1998, \$10 million; 1999, \$15 million;

2000, \$20 million; 2001, \$25 million; 2002, \$30 million; 2003, \$50 million; 2004, \$100 million; 2005, \$200 million. Let us assume that is the way the estimate comes back.

How they can make this estimate is a different question. Last week the Senate decided that if it was impossible to make the estimate that we would allow them to say it is impossible. That took an awful lot of debate on this floor and had been rejected in committee on a party-line vote. But we ought to be grateful for progress. We made some progress on that narrow issue. The CBO can be honest. The way the bill was originally written they were allowed to be honest relative to the private sector, but they were not allowed to admit it was impossible to estimate the direct cost of a mandate relative to the intergovernmental sector if it was. The amendment that was adopted last week permits them to make an honest statement if it is impossible to make an estimate in either or both sectors.

OK. You make an estimate. It comes back the way this is laid out on this chart.

Now my question to the managers of the bill, and last week again the Senator from Ohio saw the dilemma that we are all in, and said well, it has to be earlier than October 1, 2005, because if that is the effective date of the mandate within the meaning of the bill there will never be any cost because it sounds like October 1 is the effective date of 2005. The way I read it sure sounds like it because under my hypothetical bill it says it mandates reductions of dangerous levels of mercury from incinerator emissions after October 1, 2005. That sounds like the effective date is October 1, 2005. Most of us, and I think most ordinary readers of that language would say the effective date is October 1, 2005. But if it is 2005, if that is the first effective date, there will not be any costs. Nothing would ever be triggered because all the money would have been spent before that in order to make sure it complies by that date.

The Senator from Ohio said that would be troubling and he said there would be some years prior to that that the CBO would have to make some estimate. I do not know how. But somehow or other, it would have to make an estimate. An awful lot is hanging on this. The life or death of a bill or amendment can be hanging on this because you must have the estimate in order to get by the point of order. In order to pursue this issue and to get the thinking of the managers who are the prime sponsors of this bill, I thought I would give them this hypothetical estimated direct cost.

My question to both Senators would be, in this chart what would be the first fiscal year that this mandate would have a direct cost? What is the fiscal year to trigger that 5-year issue? If I could go through the Chair to ask the managers if they would be able to engage me in a colloquy on this issue.

The PRESIDING OFFICER (Mr. ABRAHAM). The Senator from Idaho is recognized.

Mr. KEMPTHORNE. Mr. President, in response to that—and again, this is the first time that I have seen this scenario—one of the things that I would caution everyone, including myself, is that it can be difficult in a debate situation to take a hypothetical or a scenario and then try to answer all of the questions here.

My initial view of this is that when we look at the bill, it clearly states that we will consult with our State and local elected officials. I do not know that we can answer that question based upon what the Senator has in front of us.

Mr. LEVIN. If the Senator will yield. This is the CBO estimated cost. They have now consulted. By the way, that raises a whole other series of issues which we will get to later. This assumes that all that consultation has taken place, and this is the document that comes back to us, the estimated direct cost. This is the piece of paper which CBO hands to us.

Mr. KEMPTHORNE. Then I believe, again, based upon input from the State and local officials, that input, in addition to this document, if it is—

Mr. LEVIN. This is the document created, if I may say so, following all of the input. The CBO has done its work and has consulted with State and local officials. After consultation, it then tells us that this is their best estimate. This is what is going to determine now all the points of order. They come back to us saying we have consulted and we have talked to the 87,000 State and local governments in the last week, and this is our best estimate.

Mr. KEMPTHORNE. The CBO is to make a 5-year estimate. Based upon the input from State and local officials, I would think the committee would then ask either CBO, or based upon the input from those State and local officials: What is the effective date? Again, I do not know that we can derive that from this document.

Mr. LEVIN. If I may say so, we are introducing a tremendous ambiguity, because we are saying in the bill that the first fiscal year after the effective date, and each 4 fiscal years thereafter, we will determine a critical estimate. I am giving the managers and the sponsors of the bill what the CBO tells us. I am laying it out. I cannot be clearer than that. The CBO comes back and says these are the 10 years prior to that effective date of October 1, 2002. We just cannot simply say, well, they will determine the effective date. The sponsors of the bill would have an intent, I hope, as to what is the effective date for the purposes of this bill.

I think it is going to be absolutely essential that we get an answer to that question because there is an awful lot that is going to hinge on when the effective date is. The way I wrote the hypothetical, it said: You must reduce dangerous levels of mercury from in-

cinerator emissions after October 1, 2005. That is the way the bill hypothetical states it. When I asked the Senator from Ohio last week when is the effective date, the Senator said—and I happen to agree with him, since much of the costs are going to be before 2005, probably all of the costs, because they want to be in compliance by the October 1, 2005, date. So over the weekend, I decided we would come up with an actual CBO estimated direct cost. Here it is.

The sponsors of the bill, it seems to me, should say what the intent of the bill is. We know there are costs in each of the 10 years. The first year that there are direct costs is 1996. That is what the CBO tells us. That is the first year. The second year is 1997. If we are to take this legislation on its face, it says the first year that it has a direct cost will be the first year it is effective. The next 4 years thereafter, if any of those 5 years are above the \$50 million threshold, it triggers certain very critical things. This sounds technical and dry, and it may, indeed, be almost impossible for people studying the legislative process to know what it is that is going to happen. But surely we have an obligation to clarify, to the extent we can, what is the intent of this bill.

I have laid it out. So now I am asking the managers as to whether or not it is the intent of this bill that 1996 be the first year, since there is a direct cost, according to the CBO estimate, in that year. That is my question. Is that the first fiscal year, since there is a direct cost in that year?

Mr. KEMPTHORNE. Mr. President, in response to that, again, I do not know that we can answer that just based on this. Again, I have to go back to what S. 1 is all about. It is a process. Is the requirement to remove mercury a current mandate? That would be a question. Is the requirement to remove mercury a current mandate?

Mr. LEVIN. Current before the hypothetical laws if this is adopted?

Mr. KEMPTHORNE. Yes.

Mr. LEVIN. The point is that you are asking the CBO to make an estimate. I am telling you what their conclusion is. I am telling the Senator what the conclusion of the CBO is so we can have a discussion. It makes no difference in my hypothetical whether there is a current mandate or not. The only thing that is important is this CBO estimate. I am giving the Senator the estimate and now asking the Senator if that is their estimate.

Mr. KEMPTHORNE. Mr. President, I am trying to determine what went into coming up with this CBO list and the analysis. But, again, is the requirement to remove mercury a current mandate in your hypothetical?

Mr. LEVIN. It would make it a relevant hypothetical because CBO is mandated in the bill to come up with the direct cost. In order to have a discussion of when the first fiscal year is

triggered, I am saying this is the CBO conclusion.

Assume for the moment that you do not disagree with the conclusion. Assume for the moment that there is no basis to disagree with the CBO. Assume for the moment that everybody accepts it. This is the given I want to debate. This is the conclusion of the CBO. And I add further that every single Member of the U.S. Congress says: That sure looks good to us; they have really done their work, and they have consulted with every 1 of the 87,000 local governments in the last 2 weeks. They have taken into consideration all of the factors that could be taken into consideration. Is there a current mandate or is there not? They have done everything perfectly right, and this is their conclusion.

My question is: What is the first fiscal year? I can understand if the Senator says, well, maybe the CBO is wrong. But that is a different issue. My assumption is that the CBO is correct, that they have done their homework and everybody concludes that is a very good, solid estimate. They have done their work and they have read the bill correctly. So much hangs on when is the first fiscal year that this mandate is effective, and we better understand going in that we are going to have points of order on this floor. We are going to ask that poor Parliamentarian up there to rule. Do we want the Parliamentarian to rule as to when the first fiscal year is that the mandate is effective? Do we want the Parliamentarian to rule whether there is a mandate? I guess so. But in order to have some clarity of congressional purpose here, I am simply giving the CBO estimate, and I want you to assume, if you will, that it is correct and that we all concede that this is the correct CBO estimated direct cost. We must know when that first fiscal year starts. When does that clock start running? If we do not know it now when we are passing the legislation, we are never going to be able to figure it out later.

This is where folks will come back for guidance. What was the legislative intent? This is it. This is where we are trying to create legislative intent, to the extent it is relevant these days—and it still is relevant—this is the moment where we have to lay out what our intentions are.

The reason this is different from last year's bill, in last year's bill there had to be an estimate. That was fine. If there was not, it was subject to a point of order. That was fine.

And, by the way, last year's bill had the support of the Governors and the support of local officials. And, as far as I am concerned, that was fine, too.

But in this year's bill, we have a new point of order. And in this year's bill, an awful lot is going to hinge on that estimate, including some critical appropriations language that did not exist last year.

And I will repeat, the life and death of an amendment or a bill can be deter-

mined by the answer to this question. And it is a straightforward question.

Mr. KEMP THORNE. Will the Senator yield?

Mr. LEVIN. I am happy to yield.

Mr. KEMP THORNE. In the report of the Committee on the Budget with regard to S. 1, when you look at this, you have the CBO estimate, and that is what we are talking about here. And, Mr. President, as you can see, you have all of the information, the steps that CBO would go through in order to get this, which may look similar to what the Senator's large chart looks like.

But, again, in this hypothetical, the Senator is not allowing us to go through this process. The Senator has simply gone to the conclusion of numbers by year. But, again, I do not think you can conclude this based on that because you are not allowing us to go through what a CBO process would go through.

Mr. LEVIN. If my good friend will yield again, the only way we are going to clarify congressional intent is if we state, as I have stated, that after you go through the CBO process, after the CBO goes through all of their process, after they have consulted with 87,000 local governments, after they have considered whether there is a current mandate or not a current mandate, they have done everything right, and everyone in the Senate concludes CBO is right and this is their conclusion.

Now, if that is their conclusion, my question is, when is the first fiscal year that that mandate is effective?

Mr. KEMP THORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMP THORNE. Mr. President, again I would be interested in this and we would have to reconstruct this whole scenario. We would have to continue with more hypothetical points. What does CBO recommend? Does CBO recommend what the effective date would be?

Mr. LEVIN. Is that the intent of the sponsors, that the CBO recommends? We do not give them any guidance? That the sponsors of the bill just throw it off to the CBO?

We are writing a bill here. What are we urging the CBO to do?

Mr. KEMP THORNE. Mr. President, the legislation would identify the effective date, but it would be based, again, upon input from a whole variety of resources and sources. Again, with all due respect, I do not think you could simply take one chart, numbers, and say, "Now, go back and reconstruct this whole scenario and tell me what it all concludes."

Mr. LEVIN. Well, I think there is a serious ambiguity here and, to some extent, an abdication if we let this go without clarification. The abdication is that we must, as a Senate and a House, later on know what the legislation intended. It is central to the bill that the first fiscal year in which a mandate is effective is a critical date in the bill. A

new point of order is created based upon it.

Last week, I asked the question whether or not the language in my hypothetical meant that the mandate was effective October 1, 2005. And I am going to read that again, because one sentence says yes, it is 2005. In the hypothetical, the Senate mandates reductions of dangerous levels of mercury from incinerator emissions after October 1, 2005.

Now, the average reader, the average person reading that bill, would say that is the effective date of the mandate. If it is, again, and I think my friend would agree with me, as the Senator from Ohio agreed with me last week, if the effective date of the mandate is October 1, 2005, when all emissions must comply, then it will never be triggered because all the money is going to be spent before October 1, 2005.

But I do not think we can have it both ways. We cannot say "Well, it is not the date in the statute, October 1, 2005, because all the money is going to be spent before that date, in order to have the emissions be in compliance." And that is correct. I think that is a logical response. If it is going to have any effect at all and any meaning, you cannot say that the date in the statute, October 1, 2005, is the effective date for the purpose of the point of order. You have to find the effective date prior to that.

And, according to this bill—and I am just reading the bill—the first fiscal year that there are direct costs to local and State governments is year 1. That is year 1. And you go 5 years. And if, in any of those 5 years, this mandate costs more than \$50 million, certain very, very significant things happen. And if they do not happen, very serious points of order lie.

I do not think we can have if both ways. We cannot say the effective date that is in the bill is not the one that governs because it has to be before that date and, on the other hand, we are not going to give any guidance down the road as to what the first fiscal year is.

I think that we cannot have it both ways; that we are leaving a massive ambiguity in the law. It is an example of where the new bill, because it places so much importance on the mandate, goes too far.

Unlike last year's bill, which had more balance to it and which did not link the appropriations of that estimate together, this year's bill makes an estimate in the year 1995 that is going to have an impact 10 years down the road or 20 years down the road. And I believe there is a lot of uncertainty and ambiguity, and that means legislative mischief, because there is no clarity on just this one point.

This is just one point.

Mr. KEMP THORNE. Will the Senator yield?

Mr. LEVIN. I am happy to yield.

Mr. KEMP THORNE. I believe what the Senator has described—and I must give him a great deal of credit, because

he has been very thorough and meticulous on this legislation. For that, I think we have already made some perfecting language that has been helpful.

But, really, he is providing us one piece of a puzzle and then he is saying, "Well, because with this one piece of the puzzle you can't tell us the whole picture, then the picture does not exist."

This scenario, for example, I think lacks the actual legislative language. It lacks information from State and local governments and the Federal agency on the impact of the legislation. It lacks the text of the CBO letter indicating the basis of the estimate, including CBO's assumption on the effective date based on the legislation when a regulation is written.

We could continue to construct this scenario and somehow try to back into it. But I would add that, through this process, it is on an individual basis. These will be devised by the authorizing committee based upon not strictly one piece of paper, but based upon much of what I just went through in the list. And again, it resides with the authorizing committee.

Mr. LEVIN. Mr. President, my understanding, if the Senator would yield, that the Congressional Budget Office is the one that makes the estimate. Is that correct? Is that the intent of the statute, that the Congressional Budget Office makes the estimate?

Mr. KEMPTHORNE. For the legislation, yes.

Mr. LEVIN. Mr. President, now, under my hypothetical the Congressional Budget Office has made an estimate. It has taken into consideration each of the items that have been mentioned in the authorizing bill. I could not agree more with the Senator from Idaho that there are many items in the authorizing bill that affect these direct costs. There could be hundreds of them. The CBO is mandated by this bill to make an estimate. I would not only hope but it is the assumption of this chart that the CBO has taken all of the authorizing bill's factors into account. After taking them all into account, which it is required to do, and after consulting with the State, local and tribal governments, it has reached this conclusion that I set forth on this chart.

I do not think it is accurate to say there is a puzzle here of which this is a part. This chart is the conclusion of the CBO after putting together the puzzle. They have taken each piece of the puzzle and put the puzzle together and that puzzle leads them to this conclusion. The CBO under my hypothetical has each piece of that puzzle together and reached the conclusion that has been set forth on this chart. It is true that there are many pieces. It is the CBO that has to consider those pieces and then give an estimate. Unless we can tell them now, in a hypothetical such as this, when is the first fiscal year in which that estimate is effective, we are closing our eyes to a major

ambiguity and we are going on to the next ambiguity. We are throwing up our hands. We are not defining the first fiscal year in which a mandate is effective.

I do not think that that is a way to legislate that will give guidance to folks who will be bedeviled by the points of order unless they understand what the legislation means and what the intent is of the folks that wrote it.

Now, again, I emphasize, there was a requirement in last year's bill for the CBO to make an estimate. I support that. But last year's bill was very different from this year's bill in that it did not contain this additional requirement relative to the appropriations of funds. Much more hangs on the accuracy of this mandate in this year's bill than in last year's bill. In last year's bill there had to be an estimate, there had to be an authorization for an appropriation to meet the estimate.

What last year's bill did not have and what this year's bill does have, is a point of order which makes it improper to consider a bill that does not have additional language in it which directs that if an Appropriations Committee after the mandate is effective does not appropriate money at least equal to the estimate that then a bill must direct an agency to cut back on that mandate or eliminate it or be subject to a point of order. That is one of the places where this year's bill goes too far. The fact that there is no answer to this question on this chart is evidence of the fact that this bill goes too far in that respect.

Now, I will press forward because I know that there are folks that are trying to end this session at a reasonable hour tonight. Again, I raise these hypotheticals as somebody who has had local government experience, and frankly had the same frustration with the Federal mandates that I think just about everyone has, whether they had local experience or not. My good friend from Idaho had greater local experience than I did. I was a mere council president but I was frustrated, deeply frustrated by mandates that the Federal Government imposed.

I want to act but act in a way which is practical, which works, which will reduce the number of mandates, which will force the Senate to consider mandates, but which will avoid plunging the legislative process into this pit of ambiguity.

Next question, and I welcome any guidance from the other manager of the bill on this issue. We spoke last week. I am happy to yield to the Senator from Ohio.

Mr. GLENN. Mr. President, I will be very brief because I do not have a ready answer, as the Senator knows from our previous conversations on this.

I think the things he brings up here as to the implementation of this bill are very, very good. And I do not want to rub salt into old wounds. We have talked about it enough. These are the

kind of things that normally we should have worked out in committee. That is where it is normally worked out. I do not have a ready answer for this.

Ordinarily if we are lumping a program or putting some program on to Federal, State, or local governments, we would look at what the total impact of this would be. Now, that is one way to look at it. The other way to look at it is 10 years out, nobody can make an estimate that far out. There may be some new technical development that enables us to take away mercury in a new way that is cheaper; or an intractable problem that winds up more expensive. A nuclear cleanup at the 17 different major sites all around the country in 11 different States in our nuclear weapons complex, the original estimate of cleanup as I recall in committee, we would take care of the whole thing for \$8 to \$12 billion. That was in 1985, I believe. Here we are in 1995 and 10 years later it has gone up to \$300 billion and it may go higher than that. That is how indefinite some of these estimates are.

So, while I would like to say that a CBO estimate of costs, whatever the total cost of the project is, that would trigger the point of order. Then we come up with the uncertainty of 10 years and we may be knocking a lot of things out that should be considered.

So, here we are on the floor working out things like this and trying to make acceptable language where we should have been able to do this in committee. I will not belabor that because we have already talked about it some today. I think we should take whatever time is necessary on the floor to work these things out because they are very, very real.

Now, on the other hand, too, let me make another caveat. That is this: This bill was never intended, nor was S. 993, the predecessor, intended to take care of absolutely every possible permutation, every possible what if that we could dream up. They were meant to, in most legislation where there were estimates and we knew what the estimates were within some factor of confidence, that in those which are probably 90 percent of the bills that go through here, we would have a process set up for CBO estimates and points of order to lie.

The distinguished Senator from Michigan who has gone into this legislation in, really, a lot more detail, I think, than almost any other Senator, I think is to be commended for bringing this up. And where possible we should work things like this out. I would come back to the original intent of unfunded mandates legislation, and that was to get our best estimates and if there were problems like this we bring them to the floor.

If a point of order lay because the total cost to this was \$200 million and we had to have a point of order, fine, we would do that and get on with the

conclusion of the bill in the best judgment of the Senate as to what should happen.

I do not know that we will be able to answer every what-if type problem on this. Certainly not now. And I only say one more time I wish we had more time to work this out in committee. That is where details like this are normally worked out rather than here on the floor taking up the time of the Senate.

Mr. LEVIN. Mr. President, the Senator from Ohio raises another issue. I want to discuss with him this question, and that is the outyears. As I understand this legislation, the Congressional Budget Office must estimate the direct cost of the mandate in all years in which the mandates are effective, once the threshold has been exceeded of \$50 million in any of the first 5 years after its effective date. I am wondering if the Senator from Ohio would agree with me on that.

Mr. GLENN. I agree with that statement. I think that is correct.

Mr. LEVIN. If we can imagine a mandate which does not have a sunset provision or is not a 10-year authorization or not a 5-year authorization, it is just a permanent authorization, somehow or the other the CBO has to estimate the cost forever—forever—of that mandate on local government.

I want to ask the Senator from Ohio, who has perhaps had a better view of infinity than anyone in this body, whether he can conceive of forever, and how would the Congressional Budget Office possibly estimate the direct cost of a mandate, assuming that the threshold has been met, on local government for an indefinite period of time?

Mr. GLENN. Obviously, the answer is that nobody, not the Congressional Budget Office or anyone else, can go to infinity on their estimates. Normally around here, we do it for 5 years, and we rely on those estimates. Under the Budget Act, you have a number of points of order lie there. The 5-year estimates are what would normally be made here or whatever the mandate was, the length of time.

As far as how much it is going to cost out in the indefinite future, there is no way the Budget Office or anyone else can estimate that because of inflation, changes in technology, and a whole host of things.

Mr. LEVIN. My question then of the Senator from Ohio is, since this is not an estimate of the 5-year costs, once that threshold has been reached—strike the five. I want to change my 5-year time. I do not want to get two 5-year periods in here. It would just be confusing.

There is a 5-year threshold. If, in any of the first 5 years after the mandate is effective, there is a \$50 million cost to State and local governments, at that point an estimate is triggered. The estimate, though, is not just for the 5 years.

Under the bill—and I think the Senator from Ohio just concurred with me

on this—under the bill, the estimate is for all of the years that the mandate is in effect, and that is on page 23, lines 6 and 7: You must identify a specific dollar estimate of the full direct cost of the mandate for each year or other period during which the mandate shall be in effect under the bill.

There is no 5-year limit, there is no 10-year limit, there is no 20-year limit, there is no 50-year limit. If the authorization bill has no limit, then somehow or another the CBO is supposed to estimate the direct cost to local government for every year during which the mandate shall be in effect under the bill.

My question of the managers is, would they consider changing or amending this bill so that there would be some finite limit on that estimate, even if the authorization bill itself is not limited? I am wondering if either of the managers might comment on that question.

Mr. KEMPTHORNE. Mr. President, I am one who would advocate that Congress should not just establish some mandate in infinity.

Mr. LEVIN. Or without a limit of years.

Mr. KEMPTHORNE. I think Congress ought to revisit these issues a little more often than simply saying now that we impose this mandate, it is here for infinity.

Mr. LEVIN. I am wondering if the Senator is going to cosponsor my 10-year sunset on this bill.

Mr. KEMPTHORNE. No, but that is an interesting point. You make the point as to why we should not sunset S. 1, because we need to keep this process in place to deal with these issues. It is an interesting point. Again, I would be willing to sit down with you and pencil out what perhaps you are suggesting and see if there is some way to craft this.

Mr. LEVIN. I agree with my friend from Idaho, by the way, that authorization bills should have limits. But there is no saying that Senators cannot offer a bill that does not have a limit on the length of the authorization. They do it all the time. And if they do, under this bill, the Congressional Budget Office is required to make an estimate. The managers may not like those bills, I may not like those bills, but everyone has a right to introduce those bills, and if they introduce those bills, presumably they have a right to get an estimate.

My question is, how can the CBO make an estimate for each year during which the mandate shall be in effect if there is no 5-year or 10-year limit in the bill on the mandate? That is the question that I have of the managers. I am wondering if the Senator from Ohio might also be willing to entertain some kind of a limit on how far out the CBO has to estimate a mandate if there is no limit in the bill on the length of time that the authorization will be in effect.

Mr. GLENN. I say to my friend from Michigan, I do not have any answer to

it right now. I think what you are bringing up is a very good point. Let us say, for instance, that we are not going to repeal the Clean Air Act, we are not going to say it only applies for a certain length of time and then take it off.

As the States get into implementation of the Clean Air Act, Clean Water Act, or whatever, their costs may be completely different from what was originally estimated. If so, they come back to us again and the appropriate committee should be cognizant of that and take action to make sure that is corrected so the States are not unfairly dealt with.

I tend to think that in most cases, on most legislation we would deal with, a 5-year estimate would be OK. You can bring up something else, though. What if we got into a situation like we were in about a decade ago—a little over a decade ago, about 15 years ago—where we had an inflation rate that ran 17 percent for a while? What if we got into a situation like that and the value of \$50 million changes? We might have to come back with additional legislation to change that.

Right now, you are talking about, looking at your 10-year chart on the mercury problem and taking it over a 10-year period, as that \$50 million threshold now becomes in actual current dollars worth \$25 million, or something like that. I do not believe that has been addressed here either. I do not want to argue against our own bill.

There are problems like that, too, we do need to address in committee or either make corrections in this legislation that is on the floor or provide something that takes care of those variables for the future also.

Mr. LEVIN. Mr. President, the Senator from Ohio raises a very important question. I may offer an amendment to basically have an inflation factor built in so that we would reestimate every few years what that \$50 million or \$100 million or \$200 million is to the nearest \$10 million.

I have reserved a number of amendments, and one of those amendments will probably be that feature of factoring in the inflation factor, if needed, so we do not 10 years out from now have the same number.

The next question has to do with the range, the issue of range.

Mr. KEMPTHORNE. Will the Senator yield?

Mr. LEVIN. Sure, I am happy to yield.

Mr. KEMPTHORNE. I would be happy to sit down and see what perhaps we could design here because if in fact what the Senator is suggesting is that rather than trying to have CBO give an estimate that is many, many years down there, that there can be updated reestimates by CBO so that we are being realistic in the funds that we are providing to the State and local governments to carry out that mandate. If

that is what the Senator is suggesting, then I think we are headed in the right direction.

Mr. LEVIN. That is actually a related but somewhat different idea. If I have enough space on my amendments list, I intend to offer an amendment on this matter.

The Senator from Ohio raised the same question, and this is what it is. Let us assume the estimate is that it is going to be \$50 million in each of the 5 critical fiscal years, and therefore the threshold has been met. Therefore, the language must be in the bill or it is subject to a point of order. That could be 10 years away, that period that is being estimated. And let us assume that 10 years down the road there is new technology, as my friend from Ohio said. Instead of it costing \$50 million to address the mercury problem in these incinerators, there has been a whole new technology designed and now all of a sudden it is \$5 million.

By the way, a lot of the previous estimates of costs to State and local governments have been overestimates. This is not new, totally new what is going on here. We have already required by law that there be estimates of costs to State and local governments, and there have been hundreds of them, approximately 800 of them, in the last 12 years. A lot of those estimates have been overestimates.

Now I wish to get back to the topic because I am going to try to draft an amendment which would address this issue.

Mr. GLENN. Will the Senator yield just for a correction?

Mr. LEVIN. I am happy to yield.

Mr. GLENN. I said a moment ago it raised questions about its inflation impact.

That is provided for in this legislation. The \$50 million goes up with a correction for inflation each year.

Mr. LEVIN. I am wondering whether or not the \$200 million figure also goes up as well?

It does. All right. That is fine if there is an inflation factor already built in. I thank the Senator from Ohio.

Now, getting back to this question, let us assume that there is an estimate that the first affected year, the first fiscal year in which the mandate is in effect, let us say it is the year 2001. That is what CBO says. We have no better information. It is a guesstimate probably at best, the way a lot of these are going to be. But that is it. And so the threshold is now triggered.

At that point we have to put the critical language in the bill that, unless the Appropriations Committee in the year 2001 puts in \$50 million to fund this particular mandate, an agency 5 years from now must reduce the level of this mandate or, if no money is appropriated, must take the local and State governments off the hook totally. That language must be in the authorization bill that is passed now for 10 years from now.

OK, now the CBO scores it, and they decide it is going to cost \$50 million in

the year 2001. That is their estimate—\$50 million. Now, the fiscal year 2001 comes. The Appropriations Committee says: Wait a minute. There has been new technology for the last couple of years on the question of mercury. That will cost one-tenth of what they thought 5 years ago it was going to cost. There is brand new technology. And they ask the CBO in the year 2001 to rescure it. CBO says absolutely this thing is not going to cost \$50 million; this thing is going to cost \$5 million.

Under this bill, the agency is still required to reduce the mandate. Now, that is wasteful of taxpayers' dollars. I do not think we ought to be appropriating \$50 million to anybody if \$5 million will do the job. We are trying here presumably to create incentives to reduce costs to Government. In everything we do, we are trying to drive down costs to Government.

This language says unless we address it in some way that the Appropriations Committee has to appropriate \$50 million in that year way down the road even though the CBO in that same year down the road tells us it only costs \$5 million now because of new technology.

I ask my friends whether they will work with me on language which would allow the Appropriations Committee down the road to appropriate less if they have a CBO estimate down the road which says that circumstances have changed and it will not cost as much as was thought way back then when the estimate was originally made. I am wondering if the managers would work with me on such language.

Mr. KEMP THORNE. Mr. President, if we were to work out the language, would the Senator then support the bill and vote for it?

Mr. LEVIN. If we could work out enough of these amendments, I would like to vote for this bill. I can assure my friend from Idaho that I supported the bill last year because I wanted to do something about these mandates. But we have to do it in a way which is effective, which does not waste taxpayers' dollars, because that is the last thing my friend from Idaho wants us to do, and in a way which allows us to function effectively as a legislative body.

So my answer is if we can work out enough changes in the bill that we have discussed, I would like to be able to support this bill.

Mr. KEMP THORNE. Mr. President, as the Senator described it, if it is a situation where we are in essence providing more funds than are necessary to carry out the mandate, then, yes, we need to have a mechanism because that is taxpayers' precious money, and we do not want to abuse that by having it somehow go to purposes for which it is not intended.

Mr. LEVIN. I thank my friend for that, and I will be submitting language to the managers along this line.

Mr. KEMP THORNE. One other point, if I may. There is a process there which is the rescission process by the agen-

cies. The agency that has been duly noted by the authorizing committee would deal with that issue.

Mr. LEVIN. The rescission process is a complicated process, but there is that possibility.

The next question relates to range. Is the CBO allowed to estimate a range of cost?

Mr. KEMP THORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMP THORNE. No; the intent is for the CBO to give us a specific on that number on that.

Mr. LEVIN. The reason I asked that question is because the Budget Committee on page 11 says that the committee—this is near the top of page 11 of the committee report.

The committee is concerned about and recognizes the difficulty of making outyear estimates, particularly beyond the 5-year window. The committee notes that the new enforcement procedures are based on thresholds being exceeded. However, if a range of estimates is made and that range of estimates is less than to greater than the threshold, the committee believes the enforcement procedure should apply.

Which means that at least one of the two committees thinks that apparently a range is going to be made at times and is going to be provided instead of a specific dollar.

Mr. KEMP THORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMP THORNE. I know it was the Governmental Affairs Committee, and there seemed to be a concurrence and certainly a statement that you would take the higher number. So, again, you are not going to be dealing with a range but you take the higher number. That is why I think in this scenario they are saying if you have a threshold and someone is suggesting numbers that are less than or greater than the threshold, it is the larger number that you deal with. That would be the number that we would take.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, that is what this one committee report says. But last year, that was not agreed to in the Governmental Affairs Committee, may I say. That was the subject of great discussion in Governmental Affairs. There never was a resolution of that issue.

But there are two issues. First, is a range allowed and, if so, what is the number? And if we are saying if a range is given by CBO that, No. 1, it is going to be allowed, then we have to figure out what the number is and the bill should be explicit on that question. My understanding is that a specific amount is required in this bill. That is the language in the bill. Yet, we got a committee report that talks about the possibility of a range. So I think we



have an inconsistency between the bill and the committee report.

But if a range is going to be permitted, then it seems to me the bill must be explicit as to what will be that magic, specific amount upon which a point of order is going to either lie or not lie. I must say, I do not see any logic in saying that if the range is from \$10 to \$60 million, we are going to assume for purposes of the point of order it is \$60 million. Why not take the midpoint of the range?

I do not think there is any logic in saying the high point will govern any more than there is in saying the low point will govern. It seems to me the best approach will be to say the middle will govern. But it seems to me in any event this bill is not clear on the question of whether or not a range is going to be permitted, and that it is important that we do so. Otherwise, we could have wild ranges where the CBO—in some of these cases, believe me, it is not beyond the realm of imagination that the CBO is going to say this is somewhere between \$10 million and \$100 million.

Mr. KEMPTHORNE. Will the Senator yield?

Mr. LEVIN. I will be happy to.

Mr. KEMPTHORNE. In that hypothetical where you say it is between \$10 million and \$60 million, that you take the midrange, the reason that I would be an advocate that you take the larger range is because S. 1 is based upon the presumption we are going to provide the funds to State and local government, and therefore in order to protect them, you would take the larger range. Otherwise, we have a real possibility that we are underfunding.

Mr. LEVIN. The other possibility, if I may ask the Senator to yield, is that we are overfunding. We do not want to be appropriating more money or requiring the appropriation of more money than is needed to do the job. They are both unacceptable, either to appropriate less money, if it is our determination to fund the mandate, or to appropriate more money than required.

Mr. KEMPTHORNE. If the Senator will yield, then we do have a rescission procedure that is in place.

Mr. LEVIN. We also have subsequent appropriations which are possible, as well. We are trying to legislate now on the basis of an estimate. There is no logic in an estimate to say we are going to go with the high point of a range anymore than there is to say the low point of a range. But the important point is that the legislation be clear, and it is not.

If I can say to my friend from Idaho, if we want to allow a range, we should say so. If a range is going to be allowed, we should say what it is our intent that the estimate will be. That is simply my point. This bill is not clear on a very critical issue, which has been the subject of great debate.

Finally, on this issue, in last year's Governmental Affairs Committee, the committee agreed that the range issue

would need to be resolved on the Senate floor when S. 993 was brought up for consideration. I urge the managers to clarify the range issue.

Mr. KEMPTHORNE. If the Senator will yield? I have been advised that CBO, with regard to the Budget Act, rarely uses ranges. And also, I remind all of us, with this process you do have the waiver. If there is something that comes up that you feel, therefore, you should bring to the floor to convince a majority of Senators that there is a reason to waive this point of order and those steps involved, you may do so. There is flexibility in this legislation.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, contrary to S. 993, I think this piece of legislation on which we had a debate last year—and I recall the Senator from Michigan was going to have a debate that dealt with some of this, this legislation—I believe what we provide here is that CBO will make an estimate. If they cannot make an estimate, they say they cannot make an estimate and that is it. And we do not provide for a range here, specifically. I think that is the way it should be.

If the range is of such order that CBO cannot estimate whether it is going to be above \$50 million or not, then tell us that and that is part of the information we need, that it is that uncertain. So I think to try to force them into making an estimate of ranges, I would not favor that. I think it would be better this way, in this bill, where we provide for an estimate. If they cannot make an estimate that they say is within some range of being probable, then they tell us that and say they cannot make an estimate and that is part of our fact pattern here on the floor.

Mr. LEVIN. Is it then the intent of the Senator from Ohio that if the range estimate is made by the CBO, that that would be the same as no estimate?

Mr. GLENN. I think it would be very infrequent they would run into that type of situation where it would spread over our threshold. That is the question you are talking about. We are not talking about whether on a \$50 million threshold the estimate is \$75 or \$100 million.

Mr. LEVIN. There are two questions.

Mr. GLENN. In either case. As long as CBO can tell us in their best judgment it is going to exceed the threshold, that is what we need to know, and have some estimate of that and give a figure. I think when we get into these ranges and you say what if the range is \$10 million to \$1 billion, for instance—just to pick numbers—then it is they could not possibly do that and it would be of no use to us here on the floor, anyway. So I think we are on solid ground saying either pick an estimate and that is the figure we hopefully rely on, or if they do not have any confidence in that figure, tell us that and they just cannot make an estimate.

Mr. LEVIN. Mr. President, I am wondering whether the Senator from Idaho

would agree we should prohibit ranges in this legislation? What the Senator from Ohio is saying is we do not provide for ranges in this legislation. It was a much-discussed issue.

I know a lot of time has been taken this evening on this issue, probably 15 or 20 minutes already. More time was taken in committee and it was unresolved on last year's bill.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. The bill now is silent on this thing of ranges. It says CBO will make an estimate. That means to me they will make an estimate.

Mr. LEVIN. No range.

Mr. GLENN. No range, is the way I interpreted that myself. If they cannot do that, then they just tell us that and we take that into consideration.

Mr. LEVIN. I am wondering whether the manager of the bill and chief sponsor agrees with the interpretation of the Senator from Ohio?

Mr. KEMPTHORNE. Mr. President, again we are not plowing new ground here. We are following the procedures of the Budget Act. Again, I have been advised that rarely do they come up with a range.

If you have a range that is a wide range, from CBO, then I think perhaps the authorizing committee has not provided enough information so they can zero in on what that actual figure should be.

Mr. LEVIN. I am wondering whether the Senator from Idaho agrees with the Senator from Ohio that in effect a range is not permitted or authorized under this bill? And that if they cannot give a specific amount, that they must then say it is impossible to give a specific amount?

That is what the Senator from Ohio said. I am wondering whether the Senator from Idaho agrees with that interpretation of the manager on this side?

Mr. KEMPTHORNE. Again, right now, I do not think this legislation states what a range is—it is silent on that question.

Mr. LEVIN. The Senator from Ohio said in his judgment a range is not permitted under this bill and that if they cannot give a specific amount and can only give a range, that the CBO must tell us it is impossible to give a specific amount. That is what I understood the Senator from Ohio to be saying.

I am wondering whether or not the Senator from Idaho agrees with that interpretation?

Mr. KEMPTHORNE. No, I—again, I do not know if that is encouraging some vagueness. I think the authorizing committee would say narrow that range. If CBO comes back and says this is the figure or the figures, then that is their estimate. It does not create the presumption that they have not been able to provide an estimate.

Mr. LEVIN. One last question on the range. I think the sponsor of the bill is basically saying the bill is silent. The

cosponsor of the bill, the Democratic manager, is saying in his view the bill would not allow for it. And I do not think that is the right way for us to legislate. I think this is the time to clarify that issue. It is an important issue, I can assure my colleague. It has been brought up in committee at some length.

In the event, I ask my friend from Idaho, there were a range given by the CBO, and that range were \$100 million to \$500 million, what then would be the specific amount that would have to be authorized in the bill in order for a point of order to be avoided?

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER (Mr. FRIST). The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, again, I would be more than happy to defer to a Senator who is on the Budget Committee to respond to this because again this is simply following that. So while this legislation is silent, CBO continually has been providing specific numbers. So I do not know to what extent this is going to really create that unusual problem and how many times. But in that event, again that number, or the CBO's estimate, comes back to the authorizing committee where they can deal with that and determine if they want to provide more information so CBO can then narrow it.

Mr. LEVIN. I thank my friend.

This is a very different process, may I say. The CBO would never have to determine whether or not there was a mandate that applied to local government, what year it is effective, and it was never required to create with the specificity that is going to be needed here to avoid a point of order, and involving appropriations what the estimate is of the cost to 87,000 jurisdictions.

Sure, the CBO has made estimates before. I mean we know they have made estimates for the cost to the Federal Government. But in this case there are 87,000 jurisdictions. They may have to do this in a matter of hours.

OK. Let me just plow on here.

Mr. GLENN. Mr. President, will the Senator yield?

Mr. LEVIN. I would be happy to.

Mr. GLENN. Mr. President, the way this is set up now is we are supposed to get our estimate from the CBO. They give that estimate then to the Budget Committee. The Budget Committee then has authority, as a range as I understand it—staff can correct me, if I am wrong on this—if the Budget Committee wished to, if the Budget Committee wanted to pick a figure in their wisdom, then that would be up to them to do that and recommend it to the Senate. I think that is the way it is provided for in the bill.

Mr. LEVIN. If the Senator will yield on that, when we are in committee before we get to the floor, all we have is the CBO's estimate.

Mr. GLENN. That is correct. But if the CBO has difficulty making an esti-

mate or giving us a figure to go on, then it would be up to the Budget Committee to decide whether to give us the exact figure or to say there can be no figure. I think that is the way the bill is structured right now.

Mr. LEVIN. Then the bill would have to be amended to provide that the Budget Committee would get involved prior to the markup of the bill in committee. Because as I understand it, it is CBO that makes the estimate and the Budget Committee does not become involved until the bill gets to the floor.

Mr. GLENN. If the Senator will yield, I think he is correct. I think the way it would work is in the committee, when you are considering the bill, the Budget Committee would not be involved at that point. You would have a CBO estimate. There would be a range on that, and I would say the figure would apply. It is when you come to the floor. Then the Budget Committee is required to put their judgment, their imprimatur, their approval on what the CBO has given to the Budget Committee.

Mr. LEVIN. Unless the amendment of the Senator from Ohio is adopted that says that the point of order is at the end of the process instead of the beginning—in other words, the way the bill is currently, it would be out of order even to bring the bill to the floor with a range. There is not a specific amount in the bill.

Let me just keep going to the next ambiguity. Let us assume that the CBO has made an estimate. Somehow or other they make an estimate that a bill in each of the five fiscal years is going to cost \$40 million. That is what the CBO estimates before the markup of the bill in committee, \$40 million, in each of the five fiscal years. Nothing is triggered as I understand it. Is that correct?

A Senator now wants to offer an amendment in my hypothetical that says the following: This amendment that is in front of each of the managers says that because of a health emergency no new incinerator may be built within 300 yards of a school or hospital after October 1, 2005. That is an amendment to the bill. Again, the bill has to do with the levels of mercury.

Question No. 1. Can a Senator even get an estimate under this bill? Do we have a right as individual Senators to get CBO's estimate as to what that amendment could cost? And would the managers of the bill support language which would indicate that individual Senators have a right to get estimates since our amendments can live or die depending on whether we can get an estimate? If you cannot get an estimate, your amendment is out of order. You do not even get to the point of the amount of the estimate. If you cannot get an estimate, your amendment is out of order.

So will the Senator's support language which will allow an individual Senator or Member of the House to get an estimate so that his or her amendment can be in order?

Mr. KEMPTHORNE. Mr. President, yes. I would agree to that.

Mr. LEVIN. I thank my friend. That language is being worked on as we speak.

The next question is this: That amendment, let us say, is to be offered. I am an individual Senator. I get the CBO to give me the estimate, and, by gosh, it comes back that that amendment is going to cost \$20 million per year in each of the fiscal years. Here is the situation we are now in. The bill says that mercury emissions change is going to be done by a certain year. CBO has scored it at \$40 million a year. It is not above the threshold, and nothing is triggered. I come along now and offer this amendment on the setback. That is going to add \$20 million in each year, and if adopted in committee by the committee. Now it comes to the floor.

My question is: Is the bill coming to the floor subject to a point of order for being above the threshold? CBO has scored the mercury emissions change at \$40 million. The amendment adopted in committee would add \$20 million. The question is, Is it in order for the Senate to consider that bill?

Mr. GLENN. Mr. President, it would be my opinion that once you exceed that threshold, that is a cost to the State that exceeds our Federal mandate for the threshold that is set and the point of order should apply, would be my opinion. I have not gone back to the fine print. But that would be what I think would be right because it would finally be going over the threshold of the State. That is what was set as our limit.

One other comment on the Senator's hypothetical. I would think the health emergency that he mentions here, bona fide emergencies, are exempted from consideration of a point of order under this. If this was let us say a Presidentially-declared emergency, that we have learned something new about mercury and whatever, and the distance from a school or whatever, if it was a Presidentially-declared kind of an emergency, then I think it would all be exempted from any requirements.

Mr. LEVIN. I would like to get to that issue of the emergency in a moment.

I am wondering if the Senator from Idaho would agree that that \$20 million committee amendment would push this above the threshold so it would not be in order to bring this bill to the floor of the Senate, if a point of order was raised, without raising that point of order.

Mr. KEMPTHORNE. Yes, I would agree with that.

Mr. LEVIN. That raises two questions. One is, this is just a committee amendment, it has not been adopted by the Senate yet.

Mr. KEMPTHORNE. Would the Senator repeat that?

Mr. LEVIN. The committee has adopted the amendment that costs \$20 million, but the Senate has not. Why



would it be out of order to bring the bill to the Senate floor?

Mr. KEMPTHORNE. Yes, perhaps I can clarify. I do not believe it would be out of order to bring the bill up. A point of order could lie against the amendment.

Mr. LEVIN. Well, the amendment is \$20 million, and \$20 million is under the \$50 million threshold.

Mr. KEMPTHORNE. But it is the mechanism that causes the threshold to be exceeded.

Mr. LEVIN. Is the answer, then, if the amendment is adopted, then the bill would be subject to a point of order, or the amendment itself would be subject to a point of order?

Mr. KEMPTHORNE. It is my understanding that the amendment itself would be subject to a point of order.

Mr. LEVIN. Would the Senator from Ohio be willing to comment on that?

Mr. GLENN. State your question again, please.

Mr. LEVIN. The bill that comes out of the committee has a \$40 million annual price tag in each of the 5 key years. There is a committee amendment which would add \$20 million to each of the 5 fiscal years, if that amendment were adopted by the Senate, but it has not yet been adopted. The committee amendment is now offered in the Senate. Is that amendment subject to a point of order?

Mr. GLENN. No, it would not be. What my proposed amendment I put in earlier today would say is that we would have a point of order lie at the end of all consideration of the bill before a final vote. If there is a cumulative effect of exceeding the \$50 million, then that would be voted on as a point of order at the end of the process.

Mr. LEVIN. Well, there seems to be two different opinions on this issue. I think that it is important that the language of the bill be clear as to whether or not a point of order would lie against a bill coming out of the Committee, which does not violate the threshold, before a committee amendment is considered.

Second, is the amendment of the committee subject to a point of order before it is even adopted? There are two different opinions on that issue from the managers, and I think that ought to be clarified. May I say that, in any event, it would be another reason why the amendment of the Senator from Ohio putting the point of order at the end is, I think, a wise approach to this.

Mr. President, on the emergency issue—and I see that the majority leader is on the floor, and I have a hunch that means he would like to see this colloquy come to an end. I think the managers may join him in that feeling because it has been a long day for them.

I will just ask this last question and we will pick this up tomorrow. If a bill says that there is an emergency situation, for instance, on the setback issue on the school, how would a President

declare an emergency? In other words, if the bill itself says that there is an emergency and the President signs the bill, does that meet the test of this emergency requirement? The language on page 13 says "that the President designates as emergency legislation." I do not know of any mechanism for that to happen. "And the Congress so designates in a statute."

My question is: If the statute states that this is emergency legislation, would not the signature of the President to it satisfy subsection 6 on page 13? That is my question. If the answer is no, would the sponsors tell me how does a President designate legislation as emergency legislation? Does that mean we could not induce the legislation, that we would have to wait for some kind of a designation from the White House?

Mr. KEMPTHORNE. Mr. President, again, following the Budget Act, Senate bill No. 1 goes under the Budget Act. The current process is that the President would send a letter to Congress stating that there is an emergency. The Congress would then include in the legislation the statement that an emergency exists.

So it is a two-pronged approach. First, a letter from the President, and then the legislation which would include the acknowledgement of an emergency.

Mr. LEVIN. Then my understanding of the answer of the distinguished manager is that in order for this subsection to be invoked, and an exception to the point of order requirement or language be applicable, the President must initiate by letter legislation and designate it as emergency legislation, and we as individual Senators, or Members of the House, could not introduce legislation with that designation and avoid the point of order in the absence of that prior letter; is that correct?

Mr. KEMPTHORNE. Mr. President, that is the current procedure with the Budget Act. But I state to the second part of that, could not Congress initiate something—again, you could seek a waiver of the point of order. That may be your justification.

Mr. LEVIN. Mr. President, there have been a number of statements on the floor which are going to help me shape amendments. I think what I would like to do—again, I see the distinguished majority leader on the floor. I would at this point thank the managers of the bill for engaging in these colloquies. I think they are absolutely critical to clarify legislation which is going to affect just about every amendment and bill that comes to the floor, and new points of order are being created. We should think these through and make sure they are clear. Some of the amendments which I think now can be offered—some of which I believe will now have the support of the managers—perhaps will clarify that.

I yield the floor.

Mr. GLENN. Mr. President, I know the distinguished majority leader

wants the floor shortly. But let me comment briefly here. I think Senator LEVIN has brought up a number of very good points. They are excellent points and things we should have worked out before we go ahead with this landmark legislation. It is landmark legislation. We are reversing a trend here of some 60 years, and we better do it right and make sure it is going to work.

When we talk about this on the floor—and I will not go through all of the arguments at this hour of the evening, but I doubt very much if we are going to be able to answer all of the very good questions with amendments by 3 o'clock tomorrow afternoon. I do not see how that is possible. We may want to think about this overnight and perhaps address this tomorrow. I am not saying this is an effort to delay this. These have been honest-to-goodness questions on how this would operate. There have been 5 or 6 points made to things we do not have the answers to, and we should try to get answers for as many things as possible.

I do not think we can take every possible "what if" and make sure everything is covered perfectly, because this bill was designed to be a general guidance-type bill. On the other hand, where specifics are brought up that indicate there would be a problem, I think it is incumbent upon us to address these things when we can. I am not proposing that we extend the time tomorrow for proposals that would deal with what the Senator from Michigan has brought up this evening. But I wanted to raise this as a possibility, because I do not think we are going to be able to put this all together by 3 o'clock tomorrow morning. Maybe the staffs can get together and we can talk about this tomorrow and see how we can work it out. I do not know whether the majority leader has been listening in his office or working on other things. I think he would have to agree that there are real questions that should be worked out before we lock this up for final passage. I open that up as a possibility for tomorrow that we want to consider some time tomorrow morning or tomorrow afternoon.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I thank my friend from Ohio. We will work hard overnight as well to try to cast language for the additional amendments to address some of these issues and do our very best to meet the timetable.

Mr. DOLE. And, of course, if the amendments are offered, we can have a discussion after 3. I guess the question would be whether there are some amendments that did not get offered. But if it is some critical amendment, then I think, under the order, the two leaders could agree to make an exception to the 3 o'clock cutoff, which, if it

is a legitimate amendment, I think that is what we should do.

AMENDMENT NO. 178

Mr. MACK. Mr. President, the Senator from North Dakota raises some worthwhile points.

The formulation of monetary policy ought to be of interest to all of us, and he is right to raise questions.

I, too, have questions about the Fed's operation of monetary policy. I've been concerned for a long time that the Fed, despite its independence, was forced to meet more policy goals than it is capable of meeting.

In fact, Chairman Greenspan has told me in a public hearing that the Humphrey Hawkins Act forces the Fed to act in such a way that he believes is not in the long-term best interest of American jobs and the economy.

For this and other reasons, I plan to hold hearings in both the Joint Economic Committee and the Banking Committee to examine amendments to Humphrey Hawkins. The Senator from North Dakota will, I'm sure, be very interested in changing Humphrey Hawkins because such changes should keep interest rates much lower than we have been used to.

We ought to save this debate for a few more weeks and not delay passing the unfunded mandates bill. I can assure the Senator from North Dakota that the issue of monetary policy will be aired fully.

The Dorgan amendment should be tabled, and I encourage my colleagues to do so.

Mr. MACK. Mr. President, State and local governments have been paying billions of dollars to comply with unfunded Federal mandates since the 1970's. As the Federal budget gets tighter it becomes more tempting to pass legislation telling State and local governments how they must spend more and more of their resources. According to the Congressional Budget Office roughly 10 to 20 bills that are reported out of committees every year contain unfunded Federal mandates of over \$200 million each. This seemingly endless stream of legislation imposing greater burdens on our cities and States is what prompted me to introduce legislation in the 102d Congress similar to what is being considered today.

The time is long overdue to focus attention not only on the benefits bestowed by legislation we pass, but also on the burdens imposed by the legislation. Some of this legislation, while noble and well-intended, has had the effect of thrusting Federal policymakers into the limelight as champions of a cause, while leaving the price tag for implementation with the State and local governments. Unfunded mandates place an unbearable strain on local budgets that are already burdened by local demand and, in effect, force backdoor tax increases to cover mandated costs.

State and local resources don't automatically rise whenever the Federal

Government requires new spending. As a result, State and local priorities get subordinated. For example, suppose the top priority for the city of Tallahassee is combating drugs and crime, or they need to replace wornout firefighting equipment. When the Federal Government mandates that Tallahassee spend  $x$  dollars on housing and asbestos removal, or face heavy fines for non-compliance, they effectively scuttle the city's top priority. The dollars used to build housing or remove asbestos are not available for addressing drugs and crime or fighting fires.

Some local governments have responded to the crush of mandates by raising revenue through imposing greater fee for building permits, water and sewer hookups, and subdivision approvals. Localities have also imposed development impact fees that total thousands of dollars. The National Association of Home Builders estimates that the impact fees in the State of Florida total \$5,000 per home.

In a State like Florida, the issue of unfunded Federal mandates is even more serious given the tendency by the Federal Government to ignore Florida's growth when determining the State's share of Federal funds.

This legislation will help us focus on a problem that has been growing for decades. In the future we will not pass legislation without knowing what it costs and who is going to pay for it. It is simply unfair to force State and local governments to choose between complying with Federal mandates and their more immediate local needs. I urge the swift passage of this important bill.

#### MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent there now be a period for morning business not to exceed 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### POLAND'S OUTREACH TO THE EAST

Mr. PELL. Mr. President, recently, I had the pleasure of meeting with Mr. Michal Strak, the chief of the Office of the Polish Council of Ministers. Mr. Strak brought to my attention Poland's activities with regard to Poles living in the former Soviet Union, and I would like to share some of that information with my colleagues today.

With the end of the cold war, Poland has been able to reestablish links with ethnic Poles throughout the former Soviet Union. The Polish community in the New Independent States is comprised of descendants of Poles who were exiled there during the 1930's. Poles suffered great losses during World War II, due in part to the mass deportation of Polish citizens. Many were pressed into forced labor and others died of hunger and disease. Those who survived became victims of the Soviet sys-

tem, isolated from their homeland. Until recently, their descendants have had few opportunities to learn the Polish language or culture.

Poland, which itself is undergoing major reform, maintains an active outreach program to the Polish community in the former Soviet Union—particularly Kazakhstan where more than 100,000 people of Polish origin reside. Many of these activities focus on language training, with Polish nongovernmental organizations providing Polish language teachers and textbooks, and the Polish Government offering scholarships for ethnic Poles to study in Poland. The Polish Government is also seeking to encourage and support business links between the Polish community in countries such as Kazakhstan and Poland.

These activities play an important role in helping the people of the New Independent States establish ties with the West. The Government of Poland is to be commended for its efforts to assist the Polish communities in their democratization and economic reform efforts.

#### TRIBUTE TO GERALD F. HAMRA

Mr. PRYOR. Mr. President, I would like to take a few minutes to pay tribute to a good friend and a favorite son of my home State of Arkansas. I am referring to Gerald "Jerry" Hamra, a man known as much for his charity and his devotion to family as he is for his success in the competitive world of fast-food franchising.

Jerry Hamra grew up as the son of a clothing salesman in Steele, MO. He likes to joke about his upbringing and his Lebanese heritage by referring to himself as "the rag merchant's son." Today, as chairman of the board and CEO of Wendy's of Little Rock, Inc., Jerry owns 33 Wendy's hamburger franchises in Arkansas—not bad for a rag merchant's son.

I once asked Jerry what led him to get into the hamburger business. He told me "I didn't have any choice—I had just gone belly up in a swimming pool franchise business and I needed the work." That statement belies the savvy and business acumen that we in Arkansas have come to equate with Jerry Hamra.

Jerry first came into Little Rock in 1974 and opened his first Arkansas-based Wendy's in 1975. It was the beginning of a remarkable success story. He has been recognized time and again by Wendy's International for his commitment to excellence. In 1990, he received the business' highest honor when he became the first franchisee to be inducted into the Wendy's Hall of Fame.

Those of us who have known him for so long also know that the success of Jerry Hamra, the businessman, is directly linked to the life of Jerry Hamra, the human being. Jerry once told me that his priorities are "God,